Published on *The National Law Review* https://natlawreview.com

Peloton Spinning Its Wheel in CIPAWorld?

Article By:

John H. Henson

Peloton was once the darling of Wall Street. Really made an uphill climb during COVID. But, it has since fallen on harder times.

Mainly because people can ride bikes outside and walk outside now.

And now, they are in CIPAWorld. They are stuck. Some would say “stationary” in CIPAWorld.

While we love it, it’s not the best place to be if you are a larger company.

In *Julie Jones et al v. Peloton Interactive, Inc.*, 2024 WL 3315989 (S.D. California July 5, 2024), Peloton filed a motion to dismiss the Plaintiff’s claims that Drift, a third party software, intercepted and recorded chats on Peloton’s website. Plaintiff claims that users are not informed of Drift intercepting the messages and users think they are dealing with a Peloton representative. However, Drift “allegedly harvest data from the chat transcripts it intercepts, and then interprets, analyzes, stores, and uses the data for a variety purposes” (sic). Plaintiff’s complaint alleges a single CIPA complaint. Peloton moved to dismiss.

There are four bases for liability under Section 631(a). The first three bases of liability are (1) intentionally wiretapping, (2) “willfully attempting to learn the contents or meaning of a communication in transit over a wire” and (3) “attempting to use or communicate information obtained as a result of engaging in either of the two previous activities.” The last basis for liability under Section 631(a) is liability for aiding and abetting on any person or persons who “unlawfully do, or permit, or cause to be done” for any of the other three bases for liability.

The Plaintiff plead that Drift was “more than a mere ‘extension’” for Peloton. Drift’s use of the data it gathered in real time through the chat, according to the Plaintiff, made it clear that Drift was a third party attempting to use the data for its own purposes and not solely for Peloton. Therefore, the Court found that Plaintiff had adequately stated a claim under the second clause of Section 631(a).

And because Plaintiff adequately stated a claim under the second clause, this is sufficient to state one under the third clause of Section 631(a). And to further pile on Peloton, the Court found that Plaintiff had adequately asserted a claim for relief under clause four. Peloton’s motion to dismiss was denied.

This is another example of a website provider (this time it was Peloton) being held liable under CIPA for the acts of a third party (this time it was Drift). We continue to see these cases come through.

And it seems like companies, such as Peloton, will continue to spin their wheels.

National Law Review, Volume XIV, Number 194